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Date: April 6, 2006 Name: Andrew D. Stover, Reg. No. 38,629 Signature:

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GILSON
& LIONE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Grychowski et al.

Appln. No.: 10/774,751

Filed: February 9, 2004

For: VENTILATOR CIRCUIT AND METHOD
FOR THE USE THEREOF

Examiner: Patel, Nihir B.

Art Unit: 3743

Attorney Docket No: 6298-449

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL

Sir:

Attached is/are:

- ☒ Response After Final -- Request for New Office Action and Withdrawal of Finality
☒ Return Receipt Postcard

Fee calculation:

- ☒ No additional fee is required.
☐ Small Entity.
☐ An extension fee in an amount of \$_____ for a _____-month extension of time under 37 C.F.R. § 1.136(a).
☐ A petition or processing fee in an amount of \$_____ under 37 C.F.R. § 1.17(____).
☐ An additional filing fee has been calculated as shown below:

					Small Entity			Not a Small Entity	
	Claims Remaining After Amendment		Highest No. Previously Paid For	Present Extra	Rate	Add'l Fee	or	Rate	Add'l Fee
Total		Minus			x \$25=			x \$50=	
Indep.		Minus			x 100=			x \$200=	
First Presentation of Multiple Dep. Claim					+\$180=			+\$360=	
Total					\$			Total	
								\$	

Fee payment:

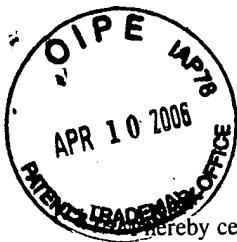
- ☐ A check in the amount of \$_____ is enclosed.
☐ Please charge Deposit Account No. 23-1925 in the amount of \$_____. A copy of this Transmittal is enclosed for this purpose.
☐ Payment by credit card in the amount of \$_____ (Form PTO-2038 is attached).
☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this paper (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

April 6, 2006
Date

Andrew D. Stover (Reg. No. 38,629)

AF
JFW



PATENT
Case No. 6298-449

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ANDREW D. STOVER, Reg. No. 38,629

Name of applicant, assignee or
Registered Representative

Signature

April 6, 2006

Date of Signature

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) Examiner: Patel, Nihir B.
)
)
) Group Art No: 3743
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**RESPONSE AFTER FINAL -- REQUEST FOR NEW OFFICE ACTION AND
WITHDRAWAL OF FINALITY**

MS AF
Commissioner For Patents
Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants are in receipt of the outstanding Office Action mailed February 8,
2006. On or about February 21, 2006, Applicants' undersigned attorney left a
telephone message with the Examiner (1) requesting a new, *non-final* office action

and (2) that the new office action address claims 5 and 31. Applicants hereby renew that request in writing for the following reasons.

As noted on the first page of the Office Action, claims 1-31 are pending in this application with claims 2 and 15-23 withdrawn from consideration, and claims 5 and 31 are purported to be rejected. In the remainder of the Office Action (pages 2-8) however, Applicants have not been able to locate any reference to claims 5 and 31, or any basis for their rejection. Accordingly, it is not possible for Applicants to ascertain whether those claims are in fact rejected, or perhaps deemed to be allowable. Accordingly, Applicants respectfully request a new Office Action setting forth the status of claims 5 and 31, and if rejected, the basis for such a rejection.

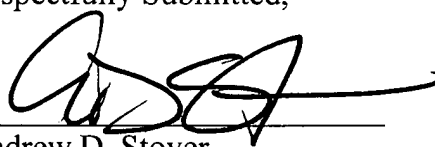
Applicants further submit that such an Office Action should not be made final. In particular, the Examiner has made a *new* rejection of claims 24-27 even though those claims were not previously amended, thereby contravening the argument that “Applicant’s amendment necessitated the new ground(s) of rejection” (Office Action at 7). Accordingly, the finality of this action is premature and notice to that effect is earnestly solicited (*see* MPEP 706.07(a) – “Under present practice, second or any subsequent actions on the merits shall be final, *except* where the examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims. . . [and] a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings *will not be made final* if it includes a rejection, on newly cited art . . . of any claim *not amended* by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art” (emphasis added)).

If for any reason an interview would be helpful to resolve any of these issues, the Examiner is respectfully requested to call the undersigned attorney at (312) 321-4713.

Respectfully Submitted,

Dated: April 6, 2006

By:

A handwritten signature in black ink, appearing to read 'A. Stover', written over a horizontal line.

Andrew D. Stover

Reg. No. 38,629

Attorney for Applicants

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